

LEWIS BRISBOIS BISGAARD & SMITH LLP

ANTHONY E. SONNETT, SB# 163182

E-Mail: Anthony.Sonnett@lewisbrisbois.com

STEVEN A. DABROWSKI, SB# 294194

E-Mail: Steven.Dabrowski@lewisbrisbois.com

633 West 5th Street, Suite 4000

Los Angeles, California 90071

Telephone: 213.250.1800

Facsimile: 213.250.7900

Attorneys for Defendant

VOLVO GROUP NORTH AMERICA,

LLC

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

TAMEIKA MORI,

Plaintiff,

vs.

TAYLOR MACHINE WORKS, INC.;
VOLVO GROUP NORTH AMERICA,
LLC; DOES 1 to 30,

Defendants.

CASE NO.

Lower Case No. RG19004473

**NOTICE OF REMOVAL OF
ACTION UNDER 28 U.S.C. 1441(b)
DIVERSITY**

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that defendant Volvo Group North America, LLC ("VGNA" or "defendant") hereby removes to this Court the State Court action described below:

1. On January 23, 2019, an action was commenced in the Superior Court of the State of California in and for the County of Alameda, entitled *Tameika Mori, Plaintiff, v. Taylor Machine Works, Inc.; Volvo Group North America, LLC; Does 1 to 30, Defendants*, Case Number RG19004473. A copy of plaintiff's complaint and accompanying documents is attached hereto as **Exhibit A**. A copy of defendant's answer to the complaint is attached hereto as **Exhibit B**.

2. The first date upon which defendant received a copy of the complaint

1 was February 22, 2019, when defendant's agent for service of process was served
2 with a copy of the complaint and a summons. Copies of the summons and notice of
3 service of process to VGNA are attached collectively hereto as **Exhibit C**.

4 3. This is a civil action of which this Court has original jurisdiction under
5 28 U.S.C. § 1332, and is one which may be removed to this Court by defendant
6 pursuant to 28 U.S.C. § 1441(b) in that it is a civil action between citizens of
7 different states and the matter in controversy exceeds the sum of \$75,000, exclusive
8 of interest and costs. Attached to plaintiff's complaint is a Statement of Damages
9 which demonstrates plaintiff is seeking damages in the amount of \$5,400,000.

10 4. Complete diversity of citizenship exists. Plaintiff is a citizen of the
11 State of California. Defendant Volvo Group North America, LLC is a Delaware
12 corporation with a principal place of business in the State of North Carolina.
13 Defendant Taylor Machine Works, Inc. is a Mississippi corporation with a principal
14 place of business in the State of Mississippi.

15 5. Co-Defendant Taylor Machine Works, Inc. has consented to the
16 removal of the State Court action to the United States District Court for the Northern
17 District of California.

18 6. Removal to the United States District Court, Northern District, Oakland
19 Division is proper as the State Court action is venued in Alameda County.

20
21 DATED: March 25, 2019

LEWIS BRISBOIS BISGAARD & SMITH LLP

22
23
24 By: 

Steven A. Dabrowski

Attorneys for Defendant VOLVO GROUP
NORTH AMERICA, LLC

EXHIBIT “A”

FEB 01 2019

PLD-PI-001

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Michael Villeggiante SBN 284860 Welton, Streb, & Welton, LLP 1432 Martin Luther King Jr. Way Oakland, CA 94612 TELEPHONE NO: 510-251-6060 FAX NO. (Optional): 510-251-6040 E-MAIL ADDRESS (Optional): mvilleggiante@weltonlaw.com ATTORNEY FOR (Name): Tameika Mori		FOR COURT USE ONLY ENDORSED FILED ALAMEDA COUNTY JAN 23 2019 CLERK OF THE SUPERIOR COURT By: ERICA BAKER, Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS: 1225 Fallon Street MAILING ADDRESS: CITY AND ZIP CODE: Oakland, CA 94612 BRANCH NAME: Unlimited Jurisdiction / Northern Branch		
PLAINTIFF: Tameika Mori DEFENDANT: Taylor Machine Works, Inc.; Volvo Group North America, LLC;		
<input checked="" type="checkbox"/> DOES 1 TO 30 COMPLAINT—Personal Injury, Property Damage, Wrongful Death <input type="checkbox"/> AMENDED (Number): Type (check all that apply): <input type="checkbox"/> MOTOR VEHICLE <input checked="" type="checkbox"/> OTHER (specify): Products Liability <input type="checkbox"/> Property Damage <input type="checkbox"/> Wrongful Death <input checked="" type="checkbox"/> Personal Injury <input type="checkbox"/> Other Damages (specify):		
Jurisdiction (check all that apply): <input type="checkbox"/> ACTION IS A LIMITED CIVIL CASE Amount demanded <input type="checkbox"/> does not exceed \$10,000 <input type="checkbox"/> exceeds \$10,000, but does not exceed \$25,000 <input checked="" type="checkbox"/> ACTION IS AN UNLIMITED CIVIL CASE (exceeds \$25,000) <input type="checkbox"/> ACTION IS RECLASSIFIED by this amended complaint <input type="checkbox"/> from limited to unlimited <input type="checkbox"/> from unlimited to limited		CASE NUMBER: RG19004473

1. Plaintiff (name or names): **Tameika Mori**

alleges causes of action against defendant (name or names):

Taylor Machine Works, Inc.; Volvo Group North America, LLC; Does 1-302. This pleading, including attachments and exhibits, consists of the following number of pages: **4**

3. Each plaintiff named above is a competent adult

a. ☐ except plaintiff (name):(1) ☐ a corporation qualified to do business in California(2) ☐ an unincorporated entity (describe):(3) ☐ a public entity (describe):(4) ☐ a minor ☐ an adult(a) ☐ for whom a guardian or conservator of the estate or a guardian ad litem has been appointed(b) ☐ other (specify):(5) ☐ other (specify):b. ☐ except plaintiff (name):(1) ☐ a corporation qualified to do business in California(2) ☐ an unincorporated entity (describe):(3) ☐ a public entity (describe):(4) ☐ a minor ☐ an adult(a) ☐ for whom a guardian or conservator of the estate or a guardian ad litem has been appointed(b) ☐ other (specify):(5) ☐ other (specify):☐ Information about additional plaintiffs who are not competent adults is shown in Attachment 3.

PLD-PI-001

SHORT TITLE:

Mori v. Taylor Machine Works, Inc.

CASE NUMBER:

4. ☐ Plaintiff (name):

Is doing business under the fictitious name (specify):

and has complied with the fictitious business name laws.

5. Each defendant named above is a natural person

a. ☒ except defendant (name): Taylor Machine Works, Inc. c. ☐ except defendant (name):(1) ☐ a business organization, form unknown(2) ☒ a corporation(3) ☐ an unincorporated entity (describe):(4) ☐ a public entity (describe):(5) ☐ other (specify):(1) ☐ a business organization, form unknown(2) ☐ a corporation(3) ☐ an unincorporated entity (describe):(4) ☐ a public entity (describe):(5) ☐ other (specify):b. ☒ except defendant (name): Volvo Group North America, LLC d. ☐ except defendant (name):(1) ☐ a business organization, form unknown(2) ☐ a corporation(3) ☐ an unincorporated entity (describe):(4) ☐ a public entity (describe):(5) ☒ other (specify):

LLC

(1) ☐ a business organization, form unknown(2) ☐ a corporation(3) ☐ an unincorporated entity (describe):(4) ☐ a public entity (describe):(5) ☐ other (specify):☐ Information about additional defendants who are not natural persons is contained in Attachment 5.

6. The true names of defendants sued as Does are unknown to plaintiff.

a. ☒ Doe defendants (specify Doe numbers): 1-30 were the agents or employees of other named defendants and acted within the scope of that agency or employment.b. ☒ Doe defendants (specify Doe numbers): 1-30 are persons whose capacities are unknown to plaintiff.7. ☐ Defendants who are joined under Code of Civil Procedure section 382 are (names):

8. This court is the proper court because

a. ☐ at least one defendant now resides in its jurisdictional area.b. ☐ the principal place of business of a defendant corporation or unincorporated association is in its jurisdictional area.c. ☒ Injury to person or damage to personal property occurred in its jurisdictional area.d. ☐ other (specify):9. ☐ Plaintiff is required to comply with a claims statute, anda. ☐ has complied with applicable claims statutes, orb. ☐ is excused from complying because (specify):

PLD-PI-001

SHORT TITLE:

Mori v. Taylor Machine Works, Inc.

CASE NUMBER:

10. The following causes of action are attached and the statements above apply to each (each complaint must have one or more causes of action attached):

- a. ☐ Motor Vehicle
- b. ☐ General Negligence
- c. ☐ Intentional Tort
- d. ☒ Products Liability
- e. ☐ Premises Liability
- f. ☐ Other (specify):

11. Plaintiff has suffered

- a. ☒ wage loss
- b. ☐ loss of use of property
- c. ☒ hospital and medical expenses
- d. ☒ general damage
- e. ☐ property damage
- f. ☒ loss of earning capacity
- g. ☐ other damage (specify):

12. ☐ The damages claimed for wrongful death and the relationships of plaintiff to the deceased are

- a. ☐ listed in Attachment 12,
- b. ☐ as follows:

13. The relief sought in this complaint is within the jurisdiction of this court.

14. Plaintiff prays for judgment for costs of suit; for such relief as is fair, just, and equitable; and for

- a. (1) ☒ compensatory damages
- (2) ☐ punitive damages

The amount of damages is (in cases for personal injury or wrongful death, you must check (1)):

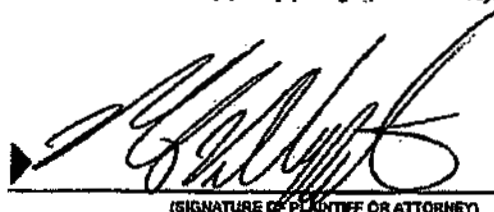
- (1) ☒ according to proof
- (2) ☐ in the amount of: \$

15. ☐ The paragraphs of this complaint alleged on information and belief are as follows (specify paragraph numbers):

Date: 1/16/19

Michael Villeggiante

(TYPE OR PRINT NAME)



(SIGNATURE OF PLAINTIFF OR ATTORNEY)

PLD-PI-001(5)

SHORT TITLE:

Mori v. Taylor Machine Works, Inc.

CASE NUMBER:

First

CAUSE OF ACTION—Products Liability

Page 4

(number)

ATTACHMENT TO ☒ Complaint ☐ Cross - Complaint
 (Use a separate cause of action form for each cause of action.)

Plaintiff (name): Tameika Mori

Prod. L-1. On or about (date): July 1, 2017

plaintiff was injured by the following product:

Reach stacker container loader known colloquially as a "top pick," believed to be a Taylor Machine Works, Inc. model XLC-976

Prod. L-2. Each of the defendants knew the product would be purchased and used without inspection for defects. The product was defective when it left the control of each defendant. The product at the time of injury was being

☒ used in the manner intended by the defendants.☒ used in the manner that was reasonably foreseeable by defendants as involving a substantial danger not readily apparent. Adequate warnings of the danger were not given.

Prod. L-3. Plaintiff was a

☐ purchaser of the product.☒ user of the product.☐ bystander to the use of the product.☐ other (specify):

PLAINTIFF'S INJURY WAS THE LEGAL (PROXIMATE) RESULT OF THE FOLLOWING:

Prod. L-4. ☒ Count One—Strict liability of the following defendants whoa. ☒ manufactured or assembled the product (names):

Taylor Machine Works, Inc.; Volvo Group North America, LLC;

☒ Does 1 to 30b. ☒ designed and manufactured component parts supplied to the manufacturer (names):

Taylor Machine Works, Inc.; Volvo Group North America, LLC;

☒ Does 1 to 30c. ☒ sold the product to the public (names):

Taylor Machine Works, Inc.; Volvo Group North America, LLC;

☒ Does 1 to 30Prod. L-5. ☒ Count Two—Negligence of the following defendants who owed a duty to plaintiff (names):

Taylor Machine Works, Inc.; Volvo Group North America, LLC;

☒ Does 1 to 30Prod. L-6. ☒ Count Three—Breach of warranty by the following defendants (names):

Taylor Machine Works, Inc.; Volvo Group North America, LLC;

☒ Does 1 to 30a. ☒ who breached an implied warrantyb. ☒ who breached an express warranty which was☒ written ☒ oralProd. L-7. ☐ The defendants who are liable to plaintiffs for other reasons and the reasons for the liability are☐ listed in Attachment-Prod. L-7 ☐ as follows:

CIV-050

- DO NOT FILE WITH THE COURT -
- UNLESS YOU ARE APPLYING FOR A DEFAULT JUDGMENT UNDER CODE OF CIVIL PROCEDURE § 585 -

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): Michael Villeggiante SBN 284860 Weltin, Streb, & Weltin, LLP 1432 Martin Luther King Jr. Way Oakland, CA 94612 E: mvilleggiante@weltinlaw.com		TELEPHONE NO.: T: 510-251-6060 F: 510-251-6040	FOR COURT USE ONLY CASE NUMBER:
ATTORNEY FOR (name): Tameika Mori			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS: 1225 Fallon Street MAILING ADDRESS: CITY AND ZIP CODE: Oakland, CA 94612 BRANCH NAME: Unlimited Jurisdiction / Northern Branch			
PLAINTIFF: Tameika Mori DEFENDANT: Taylor Machine Works, Inc.; Volvo Group North America, LLC; Does 1-30			
STATEMENT OF DAMAGES (Personal Injury or Wrongful Death)			

To (name of one defendant only): **Taylor Machine Works, Inc.**Plaintiff (name of one plaintiff only): **Tameika Mori**

seeks damages in the above-entitled action, as follows:

- | | AMOUNT |
|---|---------------------|
| 1. General damages | |
| a. <input checked="" type="checkbox"/> Pain, suffering, and inconvenience | \$ <u>1,400,000</u> |
| b. <input checked="" type="checkbox"/> Emotional distress | \$ <u>1,400,000</u> |
| c. <input type="checkbox"/> Loss of consortium | \$ _____ |
| d. <input type="checkbox"/> Loss of society and companionship (wrongful death actions only) | \$ _____ |
| e. <input type="checkbox"/> Other (specify) | \$ _____ |
| f. <input type="checkbox"/> Other (specify) | \$ _____ |
| g. <input type="checkbox"/> Continued on Attachment 1.g. | |
| 2. Special damages | |
| a. <input checked="" type="checkbox"/> Medical expenses (to date) | \$ <u>400,000</u> |
| b. <input checked="" type="checkbox"/> Future medical expenses (present value) | \$ <u>400,000</u> |
| c. <input checked="" type="checkbox"/> Loss of earnings (to date) | \$ <u>400,000</u> |
| d. <input checked="" type="checkbox"/> Loss of future earning capacity (present value) | \$ <u>1,400,000</u> |
| e. <input type="checkbox"/> Property damage | \$ _____ |
| f. <input type="checkbox"/> Funeral expenses (wrongful death actions only) | \$ _____ |
| g. <input type="checkbox"/> Future contributions (present value) (wrongful death actions only) | \$ _____ |
| h. <input type="checkbox"/> Value of personal service, advice, or training (wrongful death actions only) | \$ _____ |
| i. <input type="checkbox"/> Other (specify) | \$ _____ |
| j. <input type="checkbox"/> Other (specify) | \$ _____ |
| k. <input type="checkbox"/> Continued on Attachment 2.k. | |
| 3. <input type="checkbox"/> Punitive damages: Plaintiff reserves the right to seek punitive damages in the amount of (specify) \$ _____ when pursuing a judgment in the suit filed against you. | |

Date: **3/16/19****Michael Villeggiante**

(TYPE OR PRINT NAME)

(Proof of service on reverse)

(SIGNATURE OF PLAINTIFF OR ATTORNEY FOR PLAINTIFF)

CIV-050

- DO NOT FILE WITH THE COURT -
- UNLESS YOU ARE APPLYING FOR A DEFAULT JUDGMENT UNDER CODE OF CIVIL PROCEDURE § 585 -

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): Michael Villeggiante SBN 284860 Weltin, Streb, & Weltin, LLP 1432 Martin Luther King Jr. Way Oakland, CA 94612 ATTORNEY FOR (name): Tameika Mori		TELEPHONE NO.: T: 510-251-6060 F: 510-251-6040 E: mvilleggiante@weltinlaw.com	FOR COURT USE ONLY CASE NUMBER:
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS: 1225 Fallon Street MAILING ADDRESS: CITY AND ZIP CODE: Oakland, CA 94612 BRANCH NAME: Unlimited Jurisdiction / Northern Branch			
PLAINTIFF: Tameika Mori DEFENDANT: Taylor Machine Works, Inc.; Volvo Group North America, LLC; Does 1-30			
STATEMENT OF DAMAGES (Personal Injury or Wrongful Death)			

To (name of one defendant only): **Volvo Group North America, LLC**
 Plaintiff (name of one plaintiff only): **Tameika Mori**
 seeks damages in the above-entitled action, as follows:

- | | AMOUNT |
|---|--------------|
| 1. General damages | |
| a. <input checked="" type="checkbox"/> Pain, suffering, and inconvenience | \$ 1,400,000 |
| b. <input checked="" type="checkbox"/> Emotional distress | \$ 1,400,000 |
| c. <input type="checkbox"/> Loss of consortium | \$ |
| d. <input type="checkbox"/> Loss of society and companionship (wrongful death actions only) | \$ |
| e. <input type="checkbox"/> Other (specify) | \$ |
| f. <input type="checkbox"/> Other (specify) | \$ |
| g. <input type="checkbox"/> Continued on Attachment 1.g. | |
| 2. Special damages | |
| a. <input checked="" type="checkbox"/> Medical expenses (to date) | \$ 400,000 |
| b. <input checked="" type="checkbox"/> Future medical expenses (present value) | \$ 400,000 |
| c. <input checked="" type="checkbox"/> Loss of earnings (to date) | \$ 400,000 |
| d. <input checked="" type="checkbox"/> Loss of future earning capacity (present value) | \$ 1,400,000 |
| e. <input type="checkbox"/> Property damage | \$ |
| f. <input type="checkbox"/> Funeral expenses (wrongful death actions only) | \$ |
| g. <input type="checkbox"/> Future contributions (present value) (wrongful death actions only) | \$ |
| h. <input type="checkbox"/> Value of personal service, advice, or training (wrongful death actions only) | \$ |
| i. <input type="checkbox"/> Other (specify) | \$ |
| j. <input type="checkbox"/> Other (specify) | \$ |
| k. <input type="checkbox"/> Continued on Attachment 2.k. | |
| 3. <input type="checkbox"/> Punitive damages: Plaintiff reserves the right to seek punitive damages in the amount of (specify) \$ _____ when pursuing a judgment in the suit filed against you. | |

Date: 1/16/19
 Michael Villeggiante

(TYPE OR PRINT NAME)

(Proof of service on reverse)

(SIGNATURE OF PLAINTIFF OR ATTORNEY FOR PLAINTIFF)

Page 1 of 2



Superior Court of California, County of Alameda Alternative Dispute Resolution (ADR) Information Packet

The person who files a civil lawsuit (plaintiff) must include the ADR Information Packet with the complaint when serving the defendant. Cross complainants must serve the ADR Information Packet on any new parties named to the action.

The Court *strongly encourages* the parties to use some form of ADR before proceeding to trial. You may choose ADR by:

- Indicating your preference on Case Management Form CM-110;
- Filing the Stipulation to ADR and Delay Initial Case Management Conference for 90 Days (a local form included with the information packet); or
- Agree to ADR at your Initial Case Management Conference.

QUESTIONS? Call (510) 891-6055. Email adrprogram@alameda.courts.ca.gov
Or visit the court's website at <http://www.alameda.courts.ca.gov/adr>

What Are The Advantages Of Using ADR?

- **Faster** – Litigation can take years to complete but ADR usually takes weeks or months.
- **Cheaper** – Parties can save on attorneys' fees and litigation costs.
- **More control and flexibility** – Parties choose the ADR process appropriate for their case.
- **Cooperative and less stressful** – In mediation, parties cooperate to find a mutually agreeable resolution.
- **Preserve Relationships** – A mediator can help you effectively communicate your interests and point of view to the other side. This is an important benefit when you want to preserve a relationship.

What Is The Disadvantage Of Using ADR?

- **You may go to court anyway** – If you cannot resolve your dispute using ADR, you may still have to spend time and money resolving your lawsuit through the courts.

What ADR Options Are Available?

- **Mediation** – A neutral person (mediator) helps the parties communicate, clarify facts, identify legal issues, explore settlement options, and agree on a solution that is acceptable to all sides.
 - **Court Mediation Program:** Mediators do not charge fees for the first two hours of mediation. If parties need more time, they must pay the mediator's regular fees.

Some mediators ask for a deposit before mediation starts which is subject to a refund for unused time.

- **Private Mediation:** This is mediation where the parties pay the mediator's regular fees and may choose a mediator outside the court's panel.
- **Arbitration** – A neutral person (arbitrator) hears arguments and evidence from each side and then decides the outcome of the dispute. Arbitration is less formal than a trial and the rules of evidence are often relaxed. Arbitration is effective when the parties want someone other than themselves to decide the outcome.
- **Judicial Arbitration Program (non-binding):** The judge can refer a case or the parties can agree to use judicial arbitration. The parties select an arbitrator from a list provided by the court. If the parties cannot agree on an arbitrator, one will be assigned by the court. There is no fee for the arbitrator. The arbitrator must send the decision (award of the arbitrator) to the court. The parties have the right to reject the award and proceed to trial.
- **Private Arbitration (binding and non-binding)** occurs when parties involved in a dispute either agree or are contractually obligated. This option takes place outside of the courts and is normally binding meaning the arbitrator's decision is final.

Mediation Service Programs In Alameda County

Low cost mediation services are available through non-profit community organizations. Trained volunteer mediators provide these services. Contact the following organizations for more information:

SEEDS Community Resolution Center

1968 San Pablo Avenue, Berkeley, CA 94702-1612

Telephone: (510) 548-2377 Website: www.seedscrc.org

Their mission is to provide mediation, facilitation, training and education programs in our diverse communities – Services that Encourage Effective Dialogue and Solution-making.

Center for Community Dispute Settlement

291 McLeod Street, Livermore, CA 94550

Telephone: (925) 373-1035 Website: www.trivalleymediation.com

CCDS provides services in the Tri-Valley area for all of Alameda County.

For Victim/Offender Restorative Justice Services

Catholic Charities of the East Bay: Oakland

433 Jefferson Street, Oakland, CA 94607

Telephone: (510) 768-3100 Website: www.cceb.org

Mediation sessions involve the youth, victim, and family members work toward a mutually agreeable restitution agreement.

ALA ADR-001

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, ALAMEDA COUNTY STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
PLAINTIFF/PETITIONER: _____ DEFENDANT/RESPONDENT: _____	
STIPULATION TO ATTEND ALTERNATIVE DISPUTE RESOLUTION (ADR) AND DELAY INITIAL CASE MANAGEMENT CONFERENCE FOR 90 DAYS	

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

This stipulation is effective when:

- All parties have signed and filed this stipulation with the Case Management Conference Statement at least 15 days before the initial case management conference.
- A copy of this stipulation has been received by the ADR Program Administrator, 1225 Fallon Street, Oakland, CA 94612.

1. Date complaint filed: _____ An Initial Case Management Conference is scheduled for:

Date:

Time:

Department:

2. Counsel and all parties certify they have met and conferred and have selected the following ADR process (check one):

- ☐ Court mediation ☐ Judicial arbitration
☐ Private mediation ☐ Private arbitration

3. All parties agree to complete ADR within 90 days and certify that:

- a. No party to the case has requested a complex civil litigation determination hearing;
- b. All parties have been served and intend to submit to the jurisdiction of the court;
- c. All parties have agreed to a specific plan for sufficient discovery to make the ADR process meaningful;
- d. Copies of this stipulation and self-addressed stamped envelopes are provided for returning endorsed filed stamped copies to counsel and all parties;
- e. Case management statements are submitted with this stipulation;
- f. All parties will attend ADR conferences; and,
- g. The court will not allow more than 90 days to complete ADR.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF PLAINTIFF)

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF ATTORNEY FOR PLAINTIFF)

Page 1 of 2

ALA ADR-001

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER:
--	--------------

Date:

(TYPE OR PRINT NAME) ▶ _____
(SIGNATURE OF DEFENDANT)

Date:

(TYPE OR PRINT NAME) ▶ _____
(SIGNATURE OF ATTORNEY FOR DEFENDANT)

EXHIBIT “B”

1 **LEWIS BRISBOIS BISGAARD & SMITH LLP**

2 ANTHONY E. SONNETT, SB# 163182

3 E-Mail: Anthony.Sonnett@lewisbrisbois.com

4 STEVEN A. DABROWSKI, SB# 294194

5 E-Mail: Steven.Dabrowski@lewisbrisbois.com

6 633 West 5th Street, Suite 4000

7 Los Angeles, California 90071

8 Telephone: 213.250.1800

9 Facsimile: 213.250.7900

10 Attorneys for Defendant

11 VOLVO GROUP NORTH AMERICA, LLC

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF ALAMEDA, UNLIMITED JURISDICTION / NORTHERN BRANCH

14 RENE C. DAVIDSON ALAMEDA COUNTY COURTHOUSE

15 TAMEIKA MORI,

16 Plaintiff,

17 vs.

18 TAYLOR MACHINE WORKS, INC.;
19 VOLVO GROUP NORTH AMERICA, LLC;
20 DOES 1 to 30,

21 Defendants.

CASE NO. RG19004473

**DEFENDANT VOLVO GROUP NORTH
AMERICA, LLC'S ANSWER TO
PLAINTIFF'S COMPLAINT**

[Assigned for All Purposes to:
The Hon. Evelio Grillo – Dept. 15]

Action Filed: January 23, 2019
Trial Date: None Set

22 **TO THE COURT, ALL PARTIES AND THEIR COUNSEL OF RECORD:**

23 Defendant VOLVO GROUP NORTH AMERICA, LLC (hereinafter "Defendant") hereby
24 answers plaintiff's unverified complaint ("Complaint") as follows:

25 Pursuant to California Code of Civil Procedure Section 431.30(d), Defendant denies each
26 and every allegation of the Complaint herein and the whole thereof, and further denies that
27 plaintiff has been damaged in the sum or sums alleged, or in any sum whatsoever. Defendant
28 further denies that plaintiff has sustained or will sustain any injury, damage or loss, if any, by
reason of any act or omission on the part of Defendant.

///

///

4846-3785-8189.1

DEFENDANT VOLVO GROUP NORTH AMERICA, LLC'S ANSWER TO PLAINTIFF'S COMPLAINT

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

1. Defendant alleges that the Complaint, and each and every separate cause of action therein, fails to state facts sufficient to constitute any cause of action against Defendant.

SECOND AFFIRMATIVE DEFENSE

(Statute of Limitations)

2. Defendant alleges that plaintiff's causes of action are barred, in whole or in part, by the expiration of the applicable statutes of limitation, including, but not limited to, California Code of Civil Procedure §§ 335, 335.1, and 343, and all other applicable provisions of California's Code of Civil Procedure.

THIRD AFFIRMATIVE DEFENSE

(Comparative Fault)

3. Defendant alleges that the damages alleged by plaintiff, such damages being expressly denied, were proximately caused by the negligence, fault or carelessness of plaintiff and that such negligence, carelessness or fault comparatively reduces the percentage of any potential recovery from Defendant, if it should be found that Defendant committed any act entitling plaintiff to recovery, which Defendant expressly denies.

FOURTH AFFIRMATIVE DEFENSE

(Third-Party Comparative Fault)

4. Defendant alleges that the damages alleged by plaintiff, such damages being expressly denied, were proximately caused by the negligence, carelessness and/or other fault of firms, persons, corporations, or entities other than Defendant, and that such negligence, carelessness and/or fault bars recovery or comparatively reduces the percentage of any potential recovery attributable to Defendant, if it should be found that Defendant committed any act entitling plaintiff to recovery, which Defendant expressly denies.

FIFTH AFFIRMATIVE DEFENSE

(Independent, Intervening or Superseding Causes)

5. Defendant alleges that independent, intervening and superseding forces and/or

1 actions of third parties or plaintiff proximately caused or contributed to plaintiff's alleged losses or
2 damages, if any, barring recovery from Defendant.

3 **SIXTH AFFIRMATIVE DEFENSE**

4 (Misuse of Product)

5 6. Defendant alleges that the alleged damages in question, if any, were the result of
6 the misuse of the product in question.

7 **SEVENTH AFFIRMATIVE DEFENSE**

8 (Failure to Follow Warning Supplied with Product)

9 7. Any injuries or damages sustained by plaintiff by the product were proximately
10 caused by the failure of plaintiff and/or other third parties, unrelated to Defendant, to follow the
11 warning(s) supplied with the product, which warning(s) adequately warned of the risks involved in
12 the product's use or misuse.

13 **EIGHTH AFFIRMATIVE DEFENSE**

14 (Failure to Follow Written and/or Oral Instructions)

15 8. Defendant alleges that plaintiff's damages, if any, were caused or contributed to by
16 plaintiff's failure to comply with the written and oral instructions relating to use and maintenance
17 of the product in question, and that plaintiff's recovery, if any, should therefore be diminished or
18 barred in accordance with law.

19 **NINTH AFFIRMATIVE DEFENSE**

20 (Improperly Named as Defendant)

21 9. Defendant alleges that it is improperly named as a defendant in this action because
22 it did not design, manufacture, assemble, or sell the Taylor Machine Works, Inc. model XLC-976
23 reach stacker, as alleged in the Complaint. Further, Defendant is not now, nor has ever been, a
24 manufacturer of reach stackers such as the model XLC-976 alleged in plaintiff's Complaint.

25 **TENTH AFFIRMATIVE DEFENSE**

26 (State of the Art)

27 10. Defendant alleges that the product involved in the subject incident conformed to
28 the state of the art at the time of sale and was designed, manufactured, and tested pursuant to

generally recognized and prevailing standards and in accordance with the applicable statutes, regulations, and requirements that governed the product in the jurisdiction in which it was intended to be sold at the time of design, manufacture and sale.

ELEVENTH AFFIRMATIVE DEFENSE

(No Duty)

11. Defendant alleges that it had not assumed a duty to inspect, repair or maintain the product or products at issue, and as such the Complaint fails to state any cause of action against Defendant.

TWELFTH AFFIRMATIVE DEFENSE

(Failure to Join Necessary Parties)

12. Defendant alleges that plaintiff has failed to join a party or parties necessary and indispensable to this action.

THIRTEENTH AFFIRMATIVE DEFENSE

(Assumption of Risk)

13. Defendant alleges that if plaintiff incurred any loss or damage as alleged in the Complaint, then plaintiff's damages were legally and proximately caused by, and arose out of, risks of which plaintiff had both knowledge and understanding and that plaintiff voluntarily assumed.

FOURTEENTH AFFIRMATIVE DEFENSE

(Misuse, Abuse and Failure to Maintain Product)

14. Defendant alleges that plaintiff's damages, if any, were caused or contributed to by the misuse or abuse of and/or the failure to properly maintain and/or repair the product involved in the subject incident by plaintiff, or other third parties unrelated to Defendant. To the extent there was an abuse, alteration, misuse, or unintended use of the product by plaintiff or others which was without Defendant's knowledge or approval and was a proximate cause of the loss or damage alleged in the Complaint, then to that same extent, such abuse, alteration, misuse or unintentional use shall bar recovery against Defendant.

///

FIFTEENTH AFFIRMATIVE DEFENSE

(Alteration of Product)

15. Defendant alleges the product in question was altered after it left Defendant's control, and this alteration proximately caused the losses and damages complained of, if there were any.

SIXTEENTH AFFIRMATIVE DEFENSE

(Sophisticated User)

16. Defendant alleges that plaintiff was a sophisticated user of the product that is the subject of this suit, and that any dangers posed by the product were obvious or generally known to them, barring any claim by plaintiff for failure to warn.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Preemption)

17. Defendant alleges that plaintiff's claims and/or causes of action are barred, in whole or in part, by the doctrine of preemption.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Failure to Make Reasonable Efforts to Minimize Loss)

18. Defendant alleges that plaintiff has failed to act reasonably to minimize any loss or harm that they suffered, and could have avoided such harm by making reasonable efforts or expenditures.

NINETEENTH AFFIRMATIVE DEFENSE

(Contribution)

19. Defendant alleges that it is entitled to contribution from any person and entity whose negligence or other acts proximately contributed to the happening of the claimed incident or alleged injuries, if plaintiff should receive a verdict against Defendant.

TWENTIETH AFFIRMATIVE DEFENSE

(Indemnification)

20. Defendant alleges that it is entitled to indemnification by apportionment against all parties, persons, and entities whose negligence and/or acts contributed proximately to the

1 happening of the claimed incident or alleged damages.

2 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

3 (Equitable Doctrines)

4 21. Defendant alleges that the Complaint, including each and every cause of action
5 therein, is barred by the equitable doctrines of laches, unclean hands, and/or estoppel.

6 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

7 (Release)

8 22. Defendant alleges that plaintiff's claims are barred by any release and/or releases
9 executed by plaintiff and/or individuals, firms, corporations, or entities other than Defendant.

10 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

11 (Waiver)

12 23. Defendant alleges that plaintiff engaged in conduct and activities sufficient to
13 constitute waiver of any alleged breach of duty, negligence, act, omission, or any other conduct, if
14 any, as set forth in the Complaint.

15 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

16 (Non-Economic Damages Several Only)

17 24. Defendant alleges that, pursuant to California Civil Code sections 1431.1 and
18 1431.2, Defendant's liability, if any, for non-economic damages shall be several only and shall not
19 be joint with any other existing defendant, potential defendant, cross-complainant, cross-
20 defendant, or other person or entity. Defendant can only be held liable for the amount of non-
21 economic damages allocated to it in direct proportion to the percentage of fault, if any, determined
22 at trial, and a separate judgment shall be rendered against Defendant for that amount.

23 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

24 (Res Judicata/Collateral Estoppel)

25 25. Defendant alleges that plaintiff's Complaint is barred, in whole or in part, by res
26 judicata or collateral estoppel.

27 ///

28 ///

TWENTY-SIXTH AFFIRMATIVE DEFENSE

(Notice)

26. Defendant alleges that plaintiff failed to give timely notice to Defendant concerning any purported breach of warranty, express or implied, as required by California Commercial Code, section 2607(3)(a).

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

(Express Warranty)

27. Defendant alleges that if an express warranty was formed, said express warranty was in lieu of any other warranties, expressed or implied, including any warranty of merchantability or fitness for a particular purpose.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

(Waiver of Warranties)

28. Defendant alleges that plaintiff expressly waived any and all implied warranties not specifically provided for in the warranty, if there were any.

TWENTY-NINTH AFFIRMATIVE DEFENSE

(Settlement)

29. Defendant alleges that any recovery or settlement plaintiff may have obtained from other individuals, firms, corporations, or entities over whom Defendant has or had no control or right of control, must reduce or bar altogether any recovery or judgment which plaintiff might obtain from Defendant.

THIRTIETH AFFIRMATIVE DEFENSE

(Violations of Cal. Civ. Code §§ 3333.3, 3333.4)

30. Defendant alleges that plaintiff's damages, if any, are limited or barred by the provisions of California Civil Code sections 3333.3 and 3333.4.

THIRTY-FIRST AFFIRMATIVE DEFENSE

(Reservation of Rights)

31. Defendant has insufficient knowledge or information upon which to form a belief as to whether it may have additional affirmative defenses available. Defendant reserves the right

1 to assert additional affirmative defenses in the event discovery indicates that it will be appropriate
2 to do so.

3 WHEREFORE, Defendant prays that the Court enter a judgment:

- 4 1. Dismissing plaintiff's Complaint as against Defendant, with prejudice;
5 2. Awarding Defendant its costs and reasonable attorneys' fees;
6 3. Granting Defendant such other and further relief as the Court may deem just and
7 appropriate.

8 DEFENDANT HEREBY REQUESTS A TRIAL BY JURY.

9
10 DATED: March 25, 2019

LEWIS BRISBOIS BISGAARD & SMITH LLP

11
12 By: 

13 Anthony E. Sonnett
14 Steven A. Dabrowski
15 Attorneys for Defendant
16 VOLVO GROUP NORTH AMERICA, LLC
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CALIFORNIA STATE COURT PROOF OF SERVICE

Mori v. VGNA - Case No. RG19004473

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to the action. My business address is 633 West 5th Street, Suite 4000, Los Angeles, CA 90071.

On March 25, 2019, I served the following document(s): **DEFENDANT VOLVO GROUP NORTH AMERICA, LLC'S ANSWER TO PLAINTIFF'S COMPLAINT**

I served the documents on the following persons at the following addresses (including fax numbers and e-mail addresses, if applicable):

Michael Villeggiante, Esq.
WELTIN, STREB, & WELTIN, LLP
1432 Martin Luther King Jr. Way
Oakland, CA 94612
Tel: 510-251-6060
Fax: 510-251-6040
Email: mvilleggiante@weltinlaw.com

Attorneys for Plaintiff Tameika Mori

The documents were served by the following means:

☒ (BY U.S. MAIL) I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed above and:

☒ Placed the envelope or package for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice for collection and processing correspondence for mailing. Under that practice, on the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service, in a sealed envelope or package with the postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 25, 2019, at Los Angeles, California.


SAMANTHA COX

EXHIBIT “C”

FEB 01 2019

SUM-100

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

Taylor Machine Works, Inc.; Volvo Group North America, LLC; Does
1-30

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

Tameika Mori

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

RECORDED
FILED

ALAMEDA COUNTY
CLERK OF THE SUPERIOR COURT
By: ERICA BAKER, Deputy

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte pueda decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CÁLENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le queda más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, pueda perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desear el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): Superior Ct. of Cal., County of Alameda
1225 Fallon Street
Oakland, CA 94612

CASE NUMBER
(Número del Caso):

RG19004473

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Michael Villeggiante; Welton, Streb, & Welton, LLP; 1432 MLK Jr. Way, Oakland, CA 94612; 510-251-6060

DATE:

(Fecha)

JAN 23 2019

Clark, by

(Secretario)

[Signature]

, Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

(SEAL)

NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):

- ☒ on behalf of (specify): VOLVO GROUP NORTH AMERICA, LLC

- under: ☐ CCP 416.10 (corporation) ☐ CCP 416.80 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☒ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)

- ☒ other (specify): LLC

- ☐ by personal delivery on (date):



**Service of Process
Transmittal**

02/22/2019

CT Log Number 534975228

TO: Therence O Pickett, V.P., Gen Csl & Secretary
Volvo Group North America, Inc.
7900 National Service Rd
Greensboro, NC 27409-9416

RE: Process Served in California

FOR: Volvo Group North America, LLC (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: TAMEIKA MORI, PLTF. vs. TAYLOE MACHINE WORKS, INC. AND Volvo Group North America, LLC, DFTS.

DOCUMENT(S) SERVED: SUMMONS, COMPLAINT, ATTACHMENT(S), STIPULATION

COURT/AGENCY: ALAMEDA COUNTY - SUPERIOR COURT, CA
Case # RG19004473

NATURE OF ACTION: Product Liability Litigation - Personal Injury - ON 07/01/2017

ON WHOM PROCESS WAS SERVED: C T Corporation System, Los Angeles, CA

DATE AND HOUR OF SERVICE: By Process Server on 02/22/2019 at 10:59

JURISDICTION SERVED : California

APPEARANCE OR ANSWER DUE: Within 30 calendar days after this summons and legal papers are served on you to file

ATTORNEY(S) / SENDER(S): MICHAEL VILLEGIANTE
WELTIN, STREB, & WELTIN, LLP
1432 MARTIN LUTHER KING JR. WAY
OAKLAND, CA 94612
510-251-6060

ACTION ITEMS: CT has retained the current log, Retain Date: 02/22/2019, Expected Purge Date: 02/27/2019

Image SOP

Email Notification, Therence O Pickett therence.pickett@volvo.com

Email Notification, Donna Niemann donna.niemann@volvo.com

Email Notification, Jennifer Brown jennifer.brown@volvo.com

SIGNED: C T Corporation System

ADDRESS: 555 Capitol Mall
Suite 1000
Sacramento, CA 95814

TELEPHONE: 916-497-0656

FEDERAL COURT PROOF OF SERVICE

Tameika Mori v. Taylor Machine Works, Inc., et al. - Case No.

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to the action. My business address is 633 West 5th Street, Suite 4000, Los Angeles, CA 90071. I am employed in the office of a member of the bar of this Court at whose direction the service was made.

On March 25, 2019, I served the following document(s): **DEFENDANT VOLVO GROUP NORTH AMERICA, LLC'S NOTICE OF INTERESTED PARTIES**

I served the documents on the following persons at the following addresses (including fax numbers and e-mail addresses, if applicable):

Michael Villeggiante, Esq.
WELTIN, STREB, & WELTIN, LLP
1432 Martin Luther King Jr. Way
Oakland, CA 94612
Tel: 510-251-6060
Fax: 510-251-6040
Email: mvilleggiante@weltinlaw.com

Attorneys for Plaintiff Tameika Mori

The documents were served by the following means:

☒ (BY U.S. MAIL) I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed above and I deposited the sealed envelope or package with the U.S. Postal Service, with the postage fully prepaid.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Executed on March 25, 2019, at Los Angeles, California.



SAMANTHA COX